

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

MDL No. 2419
Master Dkt. 1:13-md-02419-FDS

THIS DOCUMENT RELATES TO:

Judge Rya Zobel

All Cases Identified In Dkt. No. 1401, 1471,
1472 & 1473.

**PLAINTIFFS' STEERING COMMITTEE'S
NOTICE OF FILING OF DECLARATION IN SUPPORT OF RULE 56(d) RESPONSE
TO LIBERTY INDUSTRIES INC.'S MOTION FOR SUMMARY JUDGMENT**

The Plaintiffs' Steering Committee gives notice to the Court and all parties that, pursuant to Local Rule 7.1(b)(1) and Federal Rule of Civil Procedure 56(d), the Plaintiffs' Steering Committee is filing the Declaration of Marc Lipton in support of the contemporaneously filed Plaintiffs' Steering Committees Rule 56(d) Response to the Liberty Industries Inc.'s Omnibus Motion for Summary Judgment. Said declaration is attached hereto as Exhibit A.

Dated: October 31, 2014

Respectfully submitted,

/s/ Marc E. Lipton

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, Marc E. Lipton, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: October 31, 2014

/s/ Marc E. Lipton
Marc E. Lipton

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DECLARATION OF MARC LIPTON

Marc Lipton declares, under penalty of perjury on the date identified below, as follows:

1. I am a member of the Plaintiffs' Steering Committee ("PSC") in the above-styled lawsuit (the "MDL"). I am the PSC member who has principally been tasked with developing the PSC's case against Liberty Industries, Inc. ("Liberty"), and I make this declaration based on my own personal knowledge. I make this Declaration in support of the Plaintiffs' Steering Committee's Rule 56 Response to Liberty's Motion for Summary Judgment.

2. Attached as Exhibit 1 is previously produced email correspondence between Liberty and New England Compounding Pharmacy d/b/a New England Compounding Clinic ("NECC").

3. Attached as Exhibit 2 is previously produced email correspondence between Liberty and New England Compounding Pharmacy d/b/a New England Compounding Clinic ("NECC").

4. Attached as Exhibit 3 is a previously produced letter from Liberty to NECC.

5. Attached as Exhibit 4 is a true and correct copy of ISO 14664-4 entitled "Cleanrooms and associated controlled environments."

6. Attached as Exhibit 5 is previously produced email correspondence from Liberty to NECC.

7. Attached as Exhibit 6 are true and correct copies of photographs taken during the post-outbreak, December 2012 inspection of NECC's facility in Framingham, Massachusetts.

8. To date, the PSC has not taken a single deposition of any Liberty witness, although the PSC has set November 18, 2014 as dates to depose two Liberty witnesses, including Robert Kaiser and Jeffrey Erickson.

9. Based on the documents the PSC has uncovered to date and the information gleaned from the PSC's inspection in December 2012 of the NECC facility, the PSC needs additional discovery to investigate and/or prove the following:

- The ceiling tiles and grid in the 2005 and 2006 clean rooms were defectively designed and installed which posed significant threat that contaminants could enter into the clean rooms;
- Liberty's knowledge of the defective ceiling tiles in the 2005 and 2006 cleanrooms;
- Liberty knew or should have known that its construction and design of the clean rooms in the NECC facility could not meet and/or continue to meet ISO standards;
- The faulty design and/or construction of the cleanrooms presented a significant risk of contamination by falling particles and the certification tests performed by Liberty failed to account for this;
- Liberty continued to work on the clean rooms after certification and no subsequent certification testing was done to confirm the newly modified clean rooms continued to conform to the ISO certification requirements;
- What analysis Liberty conducted prior to designing the clean rooms and proceeding with construction;
- As a result of the poorly designed and constructed clean rooms, particular matter, including fungal spores, were able to enter the clean room and ultimately found their way into pharmaceuticals compounded in those clean rooms.

Executed on this 31st day of October, 2014, in Detroit, Michigan.

/S/ Marc E. Lipton

Marc E. Lipton